



2025:DHC:2467-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 14.02.2025
Pronounced on: 09.04.2025

+ W.P.(C) 13594/2022

SUNIL SINGH DEV

.....Petitioner

Through: Mr. M.K. Bhardwaj,
Mrs. Priyanka M. Bhardwaj,
Mr. Maria Mugesh Kannah,
Mr. Himanshu Bhardwaj, Advs.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr. Akshay Amritanshu, Adv.
with Sh. Devender Singh, DC
JAG

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J

1. The petitioner in the present proceedings under Article 226 of the Constitution of India, has challenged the action of the respondents in not treating the petitioner as eligible at par with his batchmates and juniors appointed on clearing the Central Armed Police Force (CAPF) (Sub Inspector) Examination – 2012, as being illegal. He further seeks a direction to the respondents to promote him to the rank of Inspector (GD) with effect from 25.01.2018, the date on which his junior, namely Sh. Om Prakash (Regiment No. 130031109) and other



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batchmates were promoted.

BRIEF FACTS:

2. The relevant facts discerned from the record are that the petitioner, aspiring to join the CAPF, upon an advertisement being issued for recruitment to the post of Assistant Sub Inspector (ASI) and Sub Inspector (SI) in the year 2012, applied for the post of Sub Inspector (SI). The petitioner qualified for the Competitive Examination as well as the Physical Endurance Test (PET) conducted by the Staff Selection Commission. The respondent no. 3 declared the final result on 01.02.2013, however, the name of the petitioner was kept in the list of 'withheld category'.

3. It appears that by an order dated 28.06.2013, the respondent no. 3/Staff Selection Board debarred the petitioner and others, for a period of five years, from appearing in any examination conducted by the respondent no. 3. Aggrieved of the same, the petitioner and others filed a Writ Petition, being W.P. (C) No. 5060/2016, which was disposed of by this Court, *vide* its order dated 31.10.2014, holding and directing as under:

"2. The main grievance raised by the petitioners is that the show cause notice served upon them by the respondents did not disclose any reasons, for concluding that the petitioners indulged in malpractices except on a post-examination analysis conducted by respondent No.2/ Staff Selection Commission and that the petitioners have no knowledge as to what material was available with the respondents that led to the cancellation of their candidature as well as their subsequent debarment from appearing in any



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examinations, for a period of five years.

3. The learned counsel for the parties submit that the case of the petitioner is squarely covered by the judgment of this Court in W.P. (C) No. 6830/2013 titled as Avtar Singh vs. Union of India and Ors, decided on 16th September 2014. We accordingly give the same directions in the present petition as well.

4. We are of the view that in the absence of any material in the show cause notice dated 28.06.2013, the said show cause notice deserves to be quashed and we accordingly quash the same.

5. We also give an opportunity to the respondents to serve a fresh show cause notice to the petitioners, if they so desire, and the same should contain the exact reasons, based on which they found that the petitioners had indulged in any kind of malpractice. In that event, the petitioners will have the right to file a reply and thereafter, the respondents shall pass a speaking and reasoned order therein.”

4. Dissatisfied by the same, the petitioner and others also filed a Review Petition, being Review Petition No. 519/2014, which was disposed of by this Court, *vide* its order dated 01.12.2014, with a direction to the respondents that, in case no adverse material is found against the petitioner, the respondents shall proceed to appoint the petitioner and others as per their merit. We quote from the order, as under:-

“After hearing the arguments of the learned counsel for the petitioner and after perusing the Review Petition, the only limited direction, which this Court deems fit to pass in this petition is that if there is no material available with the respondents to serve a fresh show cause notice to the petitioners, then the respondents shall proceed to appoint them as



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per their merit, subject to fulfilment of all other eligibility conditions.”

5. However, the respondents did not comply with the said orders, citing the plea that the same issue was pending consideration before the Supreme Court in Civil Appeal No. 2836-2838/2017, titled as ***Staff Selection Commission Through Its Chairman Vs Ms. Sudesh.***

6. After the dismissal of the said Civil Appeal, *vide* Order dated 19.07.2017, and the subsequent dismissal of a Review Petition (Civil) 2417-2419/2017, preferred by the respondent no.3, the respondents declared the result of the petitioner, *vide* letter dated 05.12.2018. As a consequence, the petitioner was issued an order of appointment dated 07.02.2019, and on the basis of said offer of appointment, he was appointed as SI (GD) in the Indo-Tibetan Border Police Force (ITBP) on 18.02.2019.

7. It is the case of the petitioner that the delay in appointing the petitioner is solely on account of delay caused by the respondents and no part of it can be attributed to the petitioner.

8. The seniority of the petitioner was fixed at Serial No. 32A as per his merit in the CAPF (Sub-Inspector) 2012, *vide* Office Order dated 14.07.2020.

9. In the meantime, however, taking into account that five years of service was required for promotion from the rank of SI (GD) to the Inspector (GD), the batch-mates of the petitioner were promoted to the rank of Inspectors (GD) in the year 2018.

10. The petitioner made a representation for consideration of his



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case for promotion to the post of Inspector (GD) from the date of promotion of his juniors. Since no action was taken by the respondents, the petitioner sent a legal notice dated 25.04.2022 in this regard, which was not replied to.

11. Consequently, the petitioner filed a Writ Petition, being W.P. (C) No. 8768/2022, which was disposed of *vide* Order dated 31.05.2022, with a direction to the respondents to decide the legal notice of the petitioner within four weeks.

12. The respondents promoted the petitioner to the post of Inspector (GD) w.e.f. 01.01.2022, *vide* Office Order dated 18.07.2022, as against the petitioner's claim of being promoted w.e.f. 25.01.2018, thereby leading to the filing of the present petition.

SUBMISSIONS OF THE PARTIES:

13. Mr. M. K. Bhardwaj, the learned counsel for the petitioner submitted that once the petitioner's seniority was fixed by the respondents as an SI (GD) by rightly placing him at Serial No. 32A as per his merit position, at the time of consideration of promotion to the post of Inspector (GD), he could not have been ignored on the ground that he had not completed five years of regular service as an SI. He contended that the respondents ought to have granted the notional promotion to the petitioner to the rank of Inspector (GD) from the date when his juniors were promoted to the said post, which inaction has, resultantly, caused grave prejudice to the petitioner.

14. He submitted that the petitioner's pay was also fixed at a lower stage by the respondent's *vis-a-vis* his juniors and batchmates, who



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were drawing higher pay than him, despite the petitioner being senior to them. The claim of the petitioner in this regard was also rejected by the respondents *vide* Order dated 04.08.2022, which is in violation of the Fundamental Rules, as the juniors and batchmates cannot be permitted to draw higher salary than the seniors, their pay is required to be fixed at the same level.

15. In these circumstances, it was submitted that the petition be allowed and the respondents be directed to treat the petitioner at par with his batch-mates of the CAPF (SI) -2012 for all purposes, including eligibility for promotion to the post of Inspector (GD) w.e.f. 25.01.2018 with all consequential benefits and arrears of pay.

16. In support of his submissions, the learned counsel placed reliance on the following decisions:

- ***Naimish Kumar Singh vs Union of India*** (2024) SCC OnLine Del 6152
- ***Govt. Of NCT of Delhi and Ors. vs Rakesh Beniwal & Ors*** (2014) SCC OnLine Del 3944
- ***Rakesh Kumar vs Union of India and Ors*** (2024) SCC OnLine Del 4886

17. *Per contra*, Mr. Akshay Amritanshu, the learned counsel for the respondents, submitted that the petitioner's result was withheld by the respondents on account of post-examination scrutiny, wherein it was revealed that the petitioner had indulged in unfair means during the examination. Subsequent to the Order dated 31.10.2014 in the Review Petition (Civil) No. 2417-2419/2017 before this Court, the



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respondents were awaiting the outcome of a similar matter pending before the Supreme Court, which was dismissed on 19.07.2017. The Review petition thereagainst was also dismissed on 31.10.2017. Thereafter, the respondents declared the result of the petitioner *vide* letter dated 05.12.2018, and appointed him as SI (GD) on 18.02.2019.

18. The learned counsel strenuously submitted that as per the Standing Order 03/2013 dated 22.02.2013, the Department had prescribed the pre-promotional course for promotion to the rank of SI (GD) – Basic Training for directly recruited SIs (GD), Map Reading 1st Standard, and the SOs Tactical Course. The performance during the aforesaid is also required to be taken into consideration for their eligibility for promotion to the post of Inspector (GD). Even though the petitioner's performance during the basic training was 'Very Good', however, the petitioner completed his eligibility service conditions only on 01.01.2022, therefore, a Departmental Promotion Committee (DPC) proceedings were conducted, and the petitioner was notionally promoted to the rank of Inspector (GD) w.e.f. from the said date.

19. As far as the petitioner's batchmates are concerned, it was submitted that they were promoted to the rank of Inspectors (GD), *vide* Order dated 25.01.2018, as they fulfilled the necessary eligibility conditions prescribed therein for the promotional post. However, the petitioner was not eligible for promotion to the said rank before 01.01.2022, as per the Recruitment Rules, 2012, and the Standing Orders. Moreover, the petitioner was not even in service at the time



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when his batchmates were promoted to the post of Inspector. It was contended that the respondents have rightly granted notional promotion to the petitioner w.e.f. 01.01.2022, , therefore, the present writ petition deserves to be dismissed.

20. In rebuttal, the learned counsel for the petitioner submitted that the petitioner had completed the requisite training required for promotion to the post of Inspector (GD) and was accordingly promoted to the said rank. However, the promotion was not granted from the date his juniors were promoted, causing injustice to the petitioner, who was higher in merit as well as pay and allowance.

ANALYSIS & FINDINGS:

21. We have considered the submissions advanced by both the parties and have perused the record.

22. Pursuant to the advertisement issued by the respondents on 18.02.2012 for the recruitment examination for the post of SI and ASI in the CAPFs – 2012, the petitioner appeared for the examination and duly qualified the written test, PET, medical fitness, as well as the interview, however, his result was withheld on account of his alleged involvement in malpractice, for which a Show Cause Notice (SCN) dated 28.06.2013 was served upon the petitioner which did not disclose any reasons. In the meanwhile, the petitioner's batchmates were appointed to the post of SI (GD) in July, 2013.

23. Notably, the said SCN came to be quashed by this Court in W.P.(C) 5060/2013 *vide* Order dated 31.10.2014. A Review petition was filed against the same, and the Coordinate Bench *vide* Order dated



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01.12.2014, disposed of the matter by directing the respondents that if there is no material available with them to serve a fresh SCN to the petitioner and others then the respondents shall proceed to appoint him and others as per their merit, subject to fulfillment of all other eligibility conditions.

24. Thereafter, the respondents declared the result of the petitioner *vide* letter dated 05.12.2018, and he was finally appointed as an SI (GD) on 18.02.2019. Whereafter, the petitioner underwent SI (GD) Basic Training w.e.f. 18.02.2019 to 01.02.2020, the SOs Tac Course w.e.f. 13.07.2020 to 05.09.2020, and the Mandatory Basic Ski Course from 21.12.2020 to 01.02.2021. The performance of the petitioner during the Basic Training was rated as 'Very Good'. Indisputably, the petitioner completed the eligibility service conditions for the promotion to the post of Inspector (GD), and a DPC was convened, whereupon, *vide* Order dated 18.07.2022, the petitioner was notionally promoted to the rank of Inspector (GD) with effect from 01.01.2022.

25. The grievance of the petitioner is that his promotion to the said post ought to have been fixed by the respondents at par with his immediate juniors, who were promoted to the post of Inspector (GD) w.e.f. 25.01.2018, as against the notional promotion granted by the respondents to him. The learned counsel for the petitioner had vehemently contended that since the petitioner had completed all the requisite conditions for promotion to the post of Inspector (GD), he should have been promoted from the date his juniors were promoted to the said rank, as the delay in appointing the petitioner was solely



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attributable to the respondents.

26. To appreciate the said submission of the petitioner, it would be appropriate to extract the observations of a Coordinate Bench of this Court in ***Govt. of NCT of Delhi & Ors. vs Rakesh Beniwal & Ors.*** (supra), as under:

“16. The appointment of the respondent/applicants took place 7 years after the examination was conducted. Their juniors were naturally eligible for promotion having completed the requisite qualifying period. However they-for no fault of their own-were retained in the same grade as a consequence of their late appointment. The right of equality before law spelt out by Article 14 of the Constitution of India dictates that all individuals must be treated equally before law. If the respondents are denied promotion on the ground that they are still serving their probation period as a consequence of their appointment in 2009, the same cannot be said to be fair treatment of all the employees by the petitioners. In the present case, the rule requiring fulfilment of qualifying service is not an immutable condition, incapable of being relieved. The Office Memoranda quoted by the Tribunal, and extracts reproduced above, disclose that promotions can be given to seniors whose claims are unjustly ignored, to start with. Therefore, this Court finds no infirmity with the direction to grant promotion to the applicant/ respondents.

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26. The delay in appointment and the consequential denial of benefits is the direct corollary of the inaction of the petitioners; consequently, they cannot take advantage of their own delays in declaring results and issuing appointment letters to deny promotion to the respondents. The Supreme Court has



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*observed in this regard in the matter of **Baij Nath Sharma v. Hon'ble Rajasthan High Court at Jodhpur**, VII (1998) SLT 249=1998 SCC (L&S) 1754:*

"But here the appellant has been deprived of his promotion without any fault of his. High Court said that it might be sad state of affairs that the name of the appellant was not considered for promotion till he retired. High Court may feel anguish but it gives no comfort to the appellant. At least for future such an unfortunate thing should not happen to any other officer similarly situated. This malaise which abysmally afflicts any service when there is recruitment from different sources when there is recruitment from different sources crops up in the one form or the other with great disadvantage of one or the other. But then service is not constituted merely for the benefit of the officers in the service but with a certain purpose in view and in the present case for dispensing justice to the public at large.""

27. What emerges from the aforesaid extracts is that an employee cannot be made to suffer for any delay on the part of his/her employer in appointing him/her to the post for which he/she duly qualified in the relevant recruitment examination in terms of their promotion, seniority, pay, etc. *vis-a-vis* his/her juniors, who were appointed before them despite qualifying through the same examination. This arbitrary act would be in the teeth of Article 14 of the Constitution of India.



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28. In the present case, the respondents *vide* Order dated 14.07.2020, placed the petitioner below his senior SI (GD) Rajender Singh, whose date of appointment is 10.01.2013, and above SI (GD) Avishek Kumar Tiwari, whose date of appointment is 14.06.2013. Once the name of the petitioner appears in the said seniority list for the SI (GD) at Serial No. 32A, along with his batchmates, then the petitioner has to be considered for promotion before his junior.

29. In these facts and circumstances of the case, the delay for failing to appoint the petitioner in time squarely rests on the respondents; the respondents should have issued the letter of appointment to the petitioner. The respondents neither issued a fresh Show Cause Notice to the petitioner, despite an opportunity being granted by the Coordinate Bench of this Court *vide* Order dated 31.10.2014, nor timely appointed the petitioner, inspite of direction issued by this Court *vide* Order dated 01.12.2014, but instead, decided to await the outcome of a Special Leave Petition on similar case that was pending before the Supreme Court.

30. It is only upon the dismissal of the Special Leave Petition and the Review Petition filed against such dismissal, that the respondents finally issued the appointment order in favour of the petitioner. In the interregnum, the petitioner has suffered unnecessarily and he cannot be further penalized for the delay caused in his appointment.

31. Once the respondents had placed the petitioner at his rightful place in the seniority list of SIs (GD), they cannot now take the plea that, since the petitioner actually joined his service on 18.02.2019, his



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service for the purpose of considering promotions could not be reckoned, as per Note 2 of the Recruitment Rules prescribing eligibility conditions for promotion to the rank of Inspector (GD) in the ITBP. We may also extract the said Recruitment Rules to which the respondents have referred, the same reads as under:

“From amongst Sub-Inspectors (General Duty) of the Indo-Tibetan Border Police Force who have rendered five years regular service in the grade and who have successfully completed pre-promotional course or courses as prescribed.

Note 1.- The eligibility condition for promotion in respect of Sub-Inspector (General Duty), who are holding the post on regular basis, on the date of the notification of these rules shall continue to be three years.

Note 2.-Where juniors who have completed their qualifying or eligibility service are being considered for promotion their seniors would also be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying or eligibility service.”

32. We find that the respondents have misplaced their reliance upon Note 2 to justify granting promotion to the petitioner to the post of Inspector (GD) only from 01.01.2022. Insofar as the reliance on the Recruitment Rules for promotion to Inspector (GD)’s and the eligibility conditions mentioned therein are concerned, once it is the respondents’ own case that the petitioner had undertaken the requisite



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promotional courses, and the reason for the petitioner not to complete the qualifying service for promotion along with his juniors was solely attributable to the respondents, the petitioner was, undoubtedly, entitled to promotion to the post of Inspector (GD) w.e.f. 25.01.2018, the date on which his juniors/batchmates were promoted to the said post.

33. Looking at the totality of facts and circumstances, the writ petition is allowed, by directing the respondents to grant notional promotion to the petitioner to the rank of Inspector (GD) w.e.f. 25.01.2018, along with notional pay fixation, seniority and other benefits at par with his immediate junior. However, the petitioner will not be entitled to any arrears of pay.

34. The writ petition is disposed of in the aforesaid terms.

SHALINDER KAUR, J.

NAVIN CHAWLA, J.

APRIL 09, 2025

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Click here to check corrigendum, if any